

STATE OF TENNESSEE,)
)
Petitioner,)
)
v.) No. _____
)
UNITED AUTO GROUP MEMPHIS II, INC.,)
a foreign corporation, doing business as)
COVINGTON PIKE TOYOTA,)
)
Respondent.)

THIS ASSURANCE OF VOLUNTARY COMPLIANCE (“Assurance”) is given by United Auto Group Memphis II, Inc., a foreign corporation, doing business as Covington Pike Toyota in Memphis, Tennessee (“Respondent”), to Paul G. Summers, Attorney General and Reporter for the State of Tennessee (“Attorney General”) on behalf of David A. McCollum, the Director of the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance (“Division”).

Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

A. The Division of Consumer Affairs of the Department of Commerce and Insurance (the “Division”) and the Attorney General conducted an investigation of specific business practices of Respondent. These practices include Respondent’s sales and leases of automobiles to consumers and Respondent’s business practices involved in facilitating the financing for the automobile purchases or leases. More specifically, the State’s investigation focused on Respondent’s representations of a “best price” to consumers for automobile sales or leases which led to consumers’ confusion regarding whether or not the best price included state and local taxes. The investigation also concerned representations by Respondent’s sales agents to consumers indicating that the sales agents’ computers were “online” with financing companies when, in fact, they were not connected to communicate with the financing companies in such manner. Finally, the State investigated Respondent’s sales agents’ representations to consumers regarding

disclosures of full and fair prices for back-end financing products including extended service warranties and other insurance packages. Respondent's business practices are more fully described in the State's Petition. As a result of the investigation, the Division and the Attorney General determined that certain acts and practices of Respondent violated the Tennessee Consumer Protection Act of 1977, TENN. CODE ANN. §§ 47-18-101, *et seq.* (the "Act").

B. Respondent offered to cooperate with the Division of Consumer Affairs and the Attorney General before it was contacted by the State, and Respondent has in fact cooperated fully with the State's investigation.

C. Respondent neither admits nor denies any wrongdoing. Further, pursuant to TENN. CODE ANN. § 47-18-107(c), acceptance of this Assurance by Respondent shall not be considered an admission of a prior violation of the Act.

D. Therefore, pursuant to TENN. CODE ANN. § 47-18-107, Respondent desires to give this Assurance, and the Attorney General desires to accept it, in order to avoid the expense of litigation.

NOW, THEREFORE, acting pursuant to TENN. CODE ANN. § 47-18-107, Respondent gives, and the Attorney General accepts, the following assurances:

1. DEFINITIONS

As used in this Assurance and accompanying Agreed Order, the following words or terms shall have the following meanings:

- 1.1 "Assurance of Voluntary Compliance" or "Assurance" shall refer to this document entitled Assurance of Voluntary Compliance in the matter of *State of Tennessee v. United Auto Group Memphis II, Inc., a foreign corporation, doing business as Covington Pike Toyota*.
- 1.2 "Consumer" means any person, a natural person, individual, governmental agency or other entities, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.
- 1.3 "Division" or "Division of Consumer Affairs" shall refer to the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance.
- 1.4 "Respondent" shall refer to United Auto Group Memphis II, Inc., doing business as Covington Pike Toyota, and/or any and all officers, owners, employees, agents and representatives of United Auto Group Memphis II, Inc., doing business as Covington Pike Toyota.
- 1.5 "Petitioner", "State of Tennessee" or "Attorney General" shall refer to the Office of the Tennessee Attorney General and Reporter.

- 1.6 “Tennessee Consumer Protection Act” or “Consumer Act” shall refer to the Tennessee Consumer Protection Act of 1977 and related statutes found at TENN. CODE ANN. §§ 47-18-101, *et seq.*

2. JURISDICTION

2.1 Jurisdiction of this Court over the subject matter herein and over the person of the Respondent for the purposes of entering into and enforcing this Assurance and Agreed Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the parties to apply for such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Assurance and Agreed Order, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof. Respondent agrees to pay all court costs and reasonable attorneys’ fees and any costs associated with any successful petitions to enforce any provision of this Assurance and Agreed Order against Respondent.

3. VENUE

3.1 Pursuant to TENN. CODE ANN. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Assurance is solely in the Circuit Court of Davidson County, Tennessee.

4. PERMANENT INJUNCTION

Accordingly, it is hereby agreed that upon approval of the Court, Respondent shall be permanently and forever enjoined and bound from directly or indirectly engaging in the practices set forth herein:

4.1 Respondent shall be prohibited from directly or indirectly engaging in any misleading, unfair or deceptive acts or practices in violation of the Tennessee Consumer Protection Act of 1977, TENN. CODE ANN. §§ 47-18-101, *et seq.* Respondent shall fully comply with all provisions of the Tennessee Consumer Protection Act of 1977, TENN. CODE ANN. §§ 47-18-101, *et seq.*, including but not limited to §§ 47-18-104(a) and (b)(27), which prohibit unfair and deceptive acts and practices;

4.2 Prior to completion of a sale, respondent shall fully, clearly and conspicuously disclose all financing terms, conditions and warranties involved in its sales of financing on automobile purchases so as not to cause the likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of its goods or services in violation of TENN. CODE ANN. § 47-18-107(b)(2), or to represent that its goods or services have approval, characteristics or benefits that they do not have in violation of TENN. CODE ANN. § 47-18-107(b)(5);

4.3 Respondent shall not cause confusion or misunderstanding with respect to the authority of a salesperson, representative or agent to negotiate the final terms of a consumer transaction through the use of its Finance and Insurance (“F & I”) managers, in violation of TENN. CODE ANN. § 47-18-107(b)(14);

4.4 Prior to completion of a sale, respondent shall fully, clearly and conspicuously disclose all the terms, conditions and warranties in financing auto purchases so as not to represent that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve, in violation of TENN. CODE ANN. § 47-18-107(b)(19);

4.5 Respondent shall not misrepresent the technological capabilities of the computer equipment used by its employees, and Respondent shall not represent or imply to consumers that its employees are using computer equipment to communicate “on line,” or term or phrase of similar import, with one or more financing sources if such an employee is not, in fact, communicating “on line” with a financing source in the consumer’s presence;

4.6 In those instances in which a consumer is quoted a monthly payment prior to initialing the “Best Deal Sheet,” or similar document, Respondent shall, if that monthly payment was calculated by including the sales tax in the financed amount, clearly and conspicuously disclose that fact to the consumer before the consumer initials the Best Deal sheet;

4.7 For Tennessee residents, Respondent shall, prior to completion of the sale, provide on the Best Deal sheet, or similar document that Respondent might choose to use in lieu of the Best Deal sheet, a written acknowledgement, to be initialed by the consumer, that states, in a clear and conspicuous manner, that (a) if Respondent quoted a monthly payment to the consumer, then the payment is based on an estimated interest rate and includes the consumer’s taxes and fees (and, if the consumer is a resident of Shelby County, his or her tags as well), (b) if the consumer does not want to finance his or her tax, fees, and tags, then the payment amount might decrease, and (c) if the consumer decides to purchase additional items, such as an extended protection plan, then the payment amount could increase.

4.8 Prior to completion of a sale, respondent shall present to each consumer a document that will clearly, conspicuously and understandably compare the difference between the coverage terms of the extended warranty and the coverage terms offered by the manufacturer’s original warranty;

4.9 Respondent shall be prohibited from failing to provide each consumer a copy of each and every document signed by the consumer, including but not limited to, powers of attorney, arbitration agreements, agreements regarding financing, sales contracts and buyer's guides;

4.10 Respondent shall be prohibited from directly or indirectly requesting consumers to sign blank forms or forms that have blanks not yet completed that will be completed at a later time during the purchase of a vehicle or during the financing of a vehicle. Nothing in this section shall prevent a consumer from requesting to sign a Department of Safety limited power of attorney with a blank for the name of the person representing the car dealership to transfer the title of their vehicle if the consumer elects to do so after being told they are not required to complete the form but it may prevent them from having to return to the dealership to sign an additional power of attorney to transfer the title of the vehicle. The only information that may be left blank on the limited power of attorney form is the name of the person that Respondent will use to transfer the title. All other information, such as the vehicle identifying information, must be completed prior to the consumer signing the document. Respondent shall be required to have any signatures notarized as required by law, i.e. the signature must be notarized at the time of the signature and in the presence of the consumer while signing;

4.11 Respondent shall be prohibited from directly or indirectly failing to correctly execute a power of attorney with a consumer including not having the signature notarized while the consumer is present;

4.12 Respondent shall be prohibited from directly or indirectly using any power of attorney with the Department of Safety or any other entity to change the title of a vehicle if the power of attorney was not fully completed prior to obtaining the consumer's signature and the form was not notarized with the consumer present.

4.13 Respondent shall be prohibited from directly or indirectly using any power of attorney with the Department of Safety or any other entity to change the title of a vehicle if the power of attorney was not fully completed prior to obtaining the consumer's signature and the form was not notarized with the consumer present.

5. PAYMENT OF ATTORNEYS' FEES AND COSTS TO THE STATE

5.1 Respondent shall pay the sum of Five Thousand and 00/100 Dollars (\$ 5,000.00) to the

State of Tennessee for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - Attorney General" on the day of execution of this Assurance.

6. PAYMENT TO THE STATE

6.1 Respondent shall pay the sum of Fourteen Thousand, Five Hundred and 00/100 Dollars (\$ 14,500.00) to the State of Tennessee as a payment to the State. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - Payment to the State" on the day of execution of this Assurance.

7. CONSUMER EDUCATION FUNDING

7.1 Respondent shall pay the sum of Five Thousand and 00/100 Dollars (\$ 5,000.00) to the State of Tennessee to fund a consumer education project selected at the sole discretion of the Director of the Division of Consumer Affairs. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - Division of Consumer Affairs" on the day of execution of this Assurance.

8. MONITORING AND COMPLIANCE

8.1 Upon request, Respondent agrees to provide books, records and documents to the State at any time, and further, to informally or formally under oath, provide testimony and other information to the State relating to compliance with this Assurance. Respondent shall make any requested information available within two (2) weeks following its receipt of the request or such other time as is mutually agreeable to the parties in writing, at the Office of the Attorney General, Consumer Advocate and Protection Division, 425 Fifth Avenue North, Nashville, Tennessee 37243, or at any other location within the State of Tennessee that is mutually agreeable in writing to Respondent and the Attorney General. Respondent retains the right to object on the grounds that the request is not relevant to the matters contained herein and to request confidentiality to the extent permitted by state law. Any such objection or request for protective order shall be directed to this Court for ruling with service of the objection by mail upon the authorized representative of the State making the request. This section shall in no way limit the

State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

9. PRIVATE RIGHT OF ACTION

9. 1 Pursuant to TENN. CODE ANN. §§ 47-18-109 and 47-18-107(e), nothing in this Assurance shall be construed to affect any private right of action that a consumer/person may hold against Respondent.

10. PENALTY FOR FAILURE TO COMPLY

10.1 Pursuant to TENN. CODE ANN. § 47-18-107(c), Respondent understands that upon execution and filing of this Assurance, any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act.

10. 2 Pursuant to TENN. CODE ANN. § 47-18-107(f), Respondent understands that any knowing violation of the terms of this Assurance shall be punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation, in addition to any other appropriate penalties and sanctions, including but not limited to contempt sanctions and the imposition of attorneys' fees and costs. Respondent agrees to pay all court costs and reasonable attorneys' fees associated with any petitions to enforce this Assurance and Order against the Respondent.

11. REPRESENTATIONS AND WARRANTIES

11.1 Respondent represents and warrants that the execution and delivery of this Assurance is ~~is~~ free and voluntary act, that this Assurance is the result of good faith negotiations, and that Respondent agrees that the Assurance and terms hereof are fair and reasonable. The parties warrant that they will ~~implement~~ the terms of this Assurance in good faith. Further, no offer, agreements, or inducements of any nature whatsoever have been made to it by the State of Tennessee, its attorneys or any employee of the Attorney General's Office, the Motor Vehicle Commission or the Division of Consumer Affairs to procure this Assurance.

11. 2 Respondent represents that signatories to this Assurance have authority to act for and bind the Respondent.

11. 3 Respondent will not participate directly or indirectly in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

11.4 Neither Respondent nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance, the Motor Vehicle Commission or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Respondent.

11.5 Acceptance of this Assurance by the State shall not be deemed approval by the State of any of Respondent's advertising or other business practices.

11.6 Within thirty (30) days of the entry of this Assurance, Respondent shall submit a copy of this Assurance to each of its officers, directors, employees and any third parties who act directly or indirectly on behalf of the Respondent as an agent, independent contractor or who are involved in conducting business in the State of Tennessee. Within forty-five (45) days of entry of this Assurance, Respondent shall provide the State with an affidavit verifying and certifying that all required persons have been supplied with a copy of this Assurance.

11.7 Respondent warrants and represents that United Auto Group Memphis II, Inc., d/b/a Covington Pike Toyota, is the proper party to this Assurance and Order. Respondent further acknowledges that the State expressly relies upon this representation and warranty, and that if it is false, misleading, deceptive, unfair or inaccurate, the State has the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondent be held in contempt, if the State so elects.

11.8 United Auto Group Memphis II, Inc., d/b/a Covington Pike Toyota, represents that it is the true legal name of the entity entering into this Assurance of Voluntary Compliance and Agreed Order. Respondent understands that the State expressly relies upon this representation and if this representation is false, unfair, deceptive, inaccurate or misleading, the State shall have the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondent be held in contempt, if the State so elects.

11.9 This Assurance and Agreed Order may only be enforced by the parties hereto.

11.10 The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

11.11 This document shall not be construed against the "drafter" because both parties participated in the drafting of this document.

11.12 This Assurance and Agreed Order constitutes the complete agreement of the parties with regard to the resolution of the matters set forth in the State's Petition. This Assurance is limited to resolving only matters set forth in the State's Petition.

11.13 Nothing in this Assurance shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Assurance shall not bar the State, the Department of Safety, the Motor Vehicle Commission or any other governmental entity from enforcing laws, regulations or rules against Respondent.

11.14 This Assurance shall be binding and effective against Respondent upon Respondent's execution of the Assurance. In the event the court does not approve this Assurance, this Judgment shall be of no force and effect against the State of Tennessee.

11.15 Nothing in this Assurance constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

11.16 No waiver, modification, or amendment of the terms of this Assurance shall be valid or binding unless made in writing, signed by the party to be charged, approved by this Honorable Court and then only to the extent set forth in such written waiver, modification or amendment.

11.17 Any failure by any party to this Order to insist upon the strict performance by any other party of any of the provisions of this Assurance and Agreed Order shall not be deemed a waiver of any of the provisions of this Assurance and Agreed Order, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Assurance and Agreed Order and the imposition of any applicable penalties, including but not limited to contempt, civil penalties and/or the payment of attorneys fees to the State.

11.18 If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance and this Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

12. COMPLIANCE WITH ALL LAWS, REGULATIONS AND RULES

12.1 Nothing in this Assurance and Order shall be construed as relieving Respondent of the

obligation to comply with all state and federal laws, regulations and rules.

13. FILING OF ASSURANCE

13.1 Upon the execution of this Assurance, the Attorney General shall prepare and file in the Circuit Court for Davidson County a Petition, Agreed Order and this Assurance for the Court's approval. Respondent hereby waives any and all rights which it may have to be heard in connection with judicial proceedings upon the Petition. Respondent agrees to pay all costs of filing such Petition, Assurance and Agreed Order. Simultaneously with the execution of this Assurance, Respondent shall execute an Agreed Order. This Assurance is made a part of and is incorporated into the Agreed Order. The Respondent agrees that it consents to the entry of this Assurance and Agreed Order without further notice.

14. APPLICABILITY OF ASSURANCE TO RESPONDENT AND ITS SUCCESSORS

14.1 Respondent agrees that the duties, responsibilities, burdens and obligations undertaken in connection with this Assurance shall apply to it, each of its officers, directors, managers, agents, assigns, representatives, employees, partners, subsidiaries, affiliates, parents, related entities, joint venturers, persons or other entities it controls, manages or operates, its successors and assigns, and to other persons or entities acting directly or indirectly on its or their behalf.

15. NOTIFICATION TO STATE

15.1 For five (5) years following execution of this Assurance, Respondent shall notify the Office of the Attorney General, in writing, at least thirty (30) days prior to the effective date of any proposed changes in its corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation or dissolution or subsidiaries, or any other changes in Respondent's status that may affect compliance with obligations arising out of this Assurance.

15.2 Any notices required to be sent to the State or the Respondents by this Assurance shall be sent by United States mail, certified mail return receipt requested or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the State:

Deputy Attorney General
Office of the Attorney General

Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, Tennessee 37202
tel: (615) 741-1671

For the Respondent:

Robert H. Kurnick, Jr., Esq.
United Auto Group
3400 Outer Drive U
Detroit, Michigan 40237
tel: (313) 592-7550

With a copy to:

J. Brook Lathram, Esq.
Burch, Porter & Johnson, PLLC
130 N. Court Ave.
Memphis, TN 38103
tel: (901) 524-5000

16. COURT COSTS

16.1 All costs associated with the filing and distribution of this Assurance and any other incidental costs or expenses incurred thereby shall be borne by Respondent. No costs shall be taxed against the State as provided by TENN. CODE ANN. § 47-18-116. Further, no discretionary costs shall be taxed to the State.

FOR THE STATE OF TENNESSEE:

PAUL G. SUMMERS
Attorney General & Reporter
B.P.R. No. 6285

LUCIAN D. GEISE
Assistant Attorney General
B.P.R. No. 19392
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Approved by:

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DIRECTOR
Division of Consumer Affairs
Department of Commerce and Insurance
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(615) 741-4737

FOR RESPONDENT:

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